

May 24, 2010

The Council on Environmental Quality
Attn: Ted Boling
722 Jackson Place, NW
Washington, DC 20503

Re: National Environmental Policy Act (NEPA) Draft Guidance, "NEPA Mitigation and Monitoring"

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Council on Environmental Quality's (CEQ's) notice regarding NEPA draft guidance regarding "NEPA Mitigation and Monitoring" published in the February 23 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by NEPA. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to NEPA's requirements. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations.

ARTBA members also routinely undertake mitigation efforts as part of the transportation improvements they build. In fact, according to a 2008 CEQ report, projects undertaken as part of the Federal-Aid Highway Program have achieved over 52,000 acres of wetland mitigation since 1996, with the mitigation amount exceeding the amount impacted by over 33,000 acres. This translates into transportation projects mitigating almost three acres of wetlands for every acre they impact. One of the primary reasons for this success is allowing flexibility in the mitigation process to ensure different approaches can be used for different projects. No two transportation projects are alike. Thus, any additional mitigation requirements should not be done in a "one-size-fits-all" manner in order to ensure the current success the transportation sector is having with mitigation efforts continues.

The specific objective of the guidance concerns mitigation requirements associated with "Findings of No Significant Impact" (FONSI) under NEPA. As implied by the name, a FONSI is a designation for a project which will not significantly impact the environment. One of the benefits of a FONSI is it allows projects that do not have significant effects on the environment, ideally, to proceed without delay. However, this is not always the case and often times in instances where impacts to the environment are relatively minor, delays in the NEPA process are still encountered.



THE ARTBA BUILDING, 1219 28TH ST., N.W., WASHINGTON, D.C. 20007
Phone: (202) 289-4434 • Fax: (202) 289-4435 • Internet: www.artba.org

This is especially true for transportation projects. According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project from the identification of the project need to the start of construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: NEPA; state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity.

Further, FHWA data reveals that Categorical Exclusions (CEs) are required for 90.6 percent of federally-funded transportation projects. CEs are typically used for projects where no real alternatives analysis is necessary, such as road rehabilitation or bridge replacement projects. A report conducted by the National Cooperative Highway Research Program (NCHRP) notes:

“[D]elays in completing [environmental assessment (EA) and CE] reviews are encountered frequently despite the minimal environmental impacts associated with such projects. Even if such project-level delays are individually small, their cumulative impact may be significant because most transportation projects are processed as CEs or EAs.”

The report goes on to show 63 percent of all state DOTs responding to the survey reported environmental process delays with preparation of CEs. These delays triple average environmental review times for CEs — from about eight months to just under two years. FHWA data also shows it now takes almost as long to complete a CE in 2006 (just under two years) as it did to complete an entire environmental impact statement (EIS) in 1970 (2.2 years).

With this in mind, ARTBA is concerned with increased reporting requirements in the guidance for projects which meet the FONSI requirements. If a CE, arguably the least burdensome of NEPA's requirements is taking an average of 2.2 years to complete, there must be special attention paid to the issue of delays in the NEPA process. From a transportation planning point of view, a FONSI should be one of the least burdensome designations attached to a transportation project. Any increase in reporting requirements must be balanced against the amount of additional delay which will be encountered.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will affect those needs. ARTBA looks forward to continuing to work with CEQ on improving NEPA in a manner which will help to preserve this balance. Should CEQ decide to proceed down this path, efforts should also be undertaken to expedite the NEPA process and offset any delays resulting from implementation of the proposed guidance.

Sincerely,



T. Peter Ruane
President & C.E.O